IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 10989 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE J.R.VORA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

IKABHAI NANABHAI SANGADIYA

Versus

DISTRICT MAGINSTRATE,DAHOD

Appearance:

1. Special Civil Application No. 10989 of 2004

MS BANNA S DUTTA for Petitioner No. 1

MRS HB PUNANI AGP for Respondent No. 1-3

CORAM : HON'BLE MR.JUSTICE J.R.VORA

Date of decision: 19/01/2005

ORAL JUDGEMENT

1. This Special Civil Application under Article 226 of the Constitution of India has been filed by the

petitioner challenging his detention in pursuance of the order passed against him by District Magistrate, Dahod, on 14.4.2004, in exercise of powers conferred upon him under Section 3(2) of the Gujarat Prevention of Anti Social Activities Act, 1985 (PASA Act for short). The petitioner is under detention as bootlegger from 21st of July, 2004 in pursuance of the above order.

2. The grounds placed on record of detention reveal that the detaining authority took into consideration two types of material to reach to the subjective satisfaction. Firstly, two crimes came to be registered against the petitioner and secondly three in-camera statements recorded by sponsoring authority and verified by the detaining authority. Two crimes on 3rd November, 2003 and one on 15th of January, 2004 came to be registered against the petitioner before Dahod (Rural) Police Station under Sections 394, 395 and 397 of the Indian Penal Code and under Section 25(1)(a) of the Arms Act. It was alleged that using weapons, the petitioner in second crime robbed Rs. 6,000/- from the witness who was also received injuries at the hand of petitioner. While in first crime, the petitioner had beaten the complainant and witnesses and robbed ornaments worth of Rs. 750. The detaining authority exhaustively scrutinised the investigating papers in both the above said crimes as placed before him. The detaining authority also took into consideration three statements recorded by the sponsoring authority, one on 30th of March and two on 25th of April, 2004. All the three statements revealing the incidents occurred two/three months before recording of the statements. From the above material, the detaining authority came to the conclusion that the petitioner was a dangerous person within the meaning of PASA Act and his illegal activities of committing robbery and harassing innocent citizens was required to be prevented forthwith and, therefore, the detaining authority passed the above said order of detention which is under challenge in this petition.

4. Learned Advocate Ms. Banna Dutta for the petitioner and learned AGP Mrs. Hansa B. Punani for the respondents were heard at length.

5. Out of various grounds urged on behalf of the petitioner and controverted by learned AGP, it appears that this petition can be examined and disposed of on the issue that whether there was proper application of mind by the detaining authority while reaching to the subjective satisfaction about continuance of the activities of the petitioner.

6. It was urged that in first crime registered against the petitioner on 3rd of November 2003, the petitioner was on bail, while in second crime, which was registered on 15th of January, 2004, according to learned Advocate for the petitioner, he was arrested on 3rd of February, 2004. From the record,it is clear that the order of detention came to be served upon the petitioner on 21st of July, 2004 in Sub-Jail Dahod. Learned Advocate for the petitioner makes a statement that right from the date of his arrest in second offence i.e. from 3rd of February, 2004, the petitioner was in judicial custody and he came to be released only in October 2004.

7. While going through the grounds of detention, it clearly appears that no material at all appears to have been placed before the detaining authority indicating that the petitioner was in judicial custody right from 3rd of February, 2004. True it is that, the order of detention can be passed even if the detenu is in judicial custody. Then in such case, the subjective satisfaction of the detaining authority about continuance of illegal activities by the detenu must have been based on cogent material indicating that the custody of the petitioner was likely to end. In this case, the petitioner was in judicial custody right from 3rd of February, 2004 and was out of circulation. This fact was germane and relevant fact to be considered by the detaining authority. However, it appears that no such material was placed before the detaining authority to form any opinion in this respect before passing of the order. Therefore, the order under challenge in this case is vitiated on this ground alone.

8. In the result, the petition is allowed. The order passed by District Magistrate, Dahod, on 14th of April, 2004, against the petitioner in exercise of powers under Section 3(1) of the PASA Act is hereby quashed and set aside. The petitioner - Ikabhai Nanabhai Sangadiya is hereby ordered to be set at liberty forthwith if he is not required to be detained in jail for any other purpose. Rule made absolute. DS permitted.

(J.R. Vora, J.)